

## REGULATORY LANGUAGE

Section 163, Title 14, CCR is amended to read:

### **§163. Harvest of Herring.**

Herring may be taken for commercial purposes only in those areas and by those methods specified in subsections (f)(1) and (f)(2) of this section under a revocable permit issued to an individual on a specified fishing vessel by the department. Transfer of permits from one boat to another may be authorized by the department upon written request by the permittee, accompanied by a copy of the current commercial boat registration of the new vessel. The fee for any approved transfer or substitution of a permit pursuant to this paragraph shall be \$50 for any request received by the department after November 15, and must be submitted with the transfer or substitution request to the department's License and Revenue Branch office. Any permittee denied a transfer pursuant to this paragraph may request a hearing before the commission to show cause why his request should not be denied. Permittees shall have their permit(s) in their possession (including the attachment of any changes approved by the department after the permit is issued) and shall be aboard the vessel named on their permit(s) at all times during herring fishing operations, except that the department may authorize a permittee to have a crew member temporarily serve in his or her place aboard the vessel during a season. Requests for temporary permittee substitution must be submitted in writing by the permittee, accompanied by a copy of the temporary substitute's current California commercial fishing license. In San Francisco Bay two or four permits may be jointly fished on a single vessel upon approval of a written request by both each permittees to the department. In Tomales Bay, Humboldt Bay and Crescent City Harbor two permits may be jointly fished on a single vessel upon approval of a written request by both permittees to the department. A permittee may simultaneously fish his or her own permit(s) and a permit(s) temporarily transferred to him or her on a single vessel within the same fishing group. A permittee serving as a temporary substitute on a permit while simultaneously fishing his or her own permit(s) on a single vessel in the same fishing group shall incur the same penalties on his/her permit(s) for all violations as those incurred against the permit for which he/she is serving as temporary substitute as prescribed in these regulations and in Section 163.5, Title 14, CCR. ~~A person may not serve as a temporary substitute on more than one permit simultaneously on a single vessel in the same fishing group.~~ Any request received by the department from November 1 to November 15 to transfer boats or substitute a permit or to simultaneously fish two or four permits on a single vessel shall be processed for approval by the department after November 15.

(a) Qualifications of Permittee. To obtain a permit to take herring a person shall:

(1) Be a currently licensed California commercial fisherman. When a permit is held in partnership (pursuant to the provisions of Section 8552.6 of the Fish and Game Code), both partners must be currently licensed California commercial fishermen.

(2) Have been a permittee during the previous herring season.

(3) Qualify for an odd- or even-numbered permit as specified in subsection (c)(1)(B).

(4) Qualify for a "DH" gill net permit as specified in subsection (c)(1)(C).

(5) Have submitted a release of property forms and payment for all herring landed in excess of the established quota as specified in subsection (e)(5) of these regulations, and all fees from prior seasons.

(6) Any person denied a permit under these regulations may request a hearing before the commission to show cause why his or her permit should not be denied.

(b) Permit Applications. Each applicant for a herring permit shall:

(1) Completely fill out and submit the required department application form (FG 1377 (Rev. ~~5/08~~ 1/09), incorporated by reference herein available at the department's License and Revenue Branch, Sacramento). Applications shall include the filing fee, as specified in section 8550.5 of the Fish and Game Code, and copies of the current California boat registration and commercial fishing license of the applicant.

(2) Permittees will be issued permits for the same area and gear type they held during the previous season. In San Francisco Bay, round haul permittees who transferred gear type to gill net were designated as CH-(600-642)-SF permittees. For every conversion of gear type to gill net by a round haul permittee, the amount of herring allocated to each round haul permittee was transferred from the round haul quota to the gill net quota. For each round haul permit converted prior to October 6, 1995, fishing with gill net gear is authorized in two of the following fishing periods: odd-numbered permits, even-numbered permits, or December herring ("DH") permits. The permit holder of a converted round haul ("CH") permit is permanently assigned to the two fishing groups ("DH", odd-, or even-numbered permit) he or she designated. For every conversion of gear type to gill net by a round haul permittee after October 6, 1995 but before October 2, 1998, the permit is permanently in the two fishing groups ("DH", odd-, or even-numbered permit) assigned by the department. All remaining round haul permits as of October 3, 1998 were converted to gill net permits and assigned to a single gill net group.

Upon transfer, the department assigned each converted "CH" permit to a single gill net group ("DH", odd numbered, or even-numbered permit) as designated by the permit holder. A round haul herring permit, held in partnership prior to November 3, 1994 and subsequently converted to a "CH" permit prior to October 2, 1998, is not subject to assignment to a single gill net group upon transfer to one of the partners.

(3) Permit Renewal. Applications for renewal of all herring permits shall be received by the department, or if mailed, postmarked, on or before the first Friday of October each year. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2.

(4) Subsections (a)(2) and (b) do not apply to permits issued for taking herring in ocean waters or to fresh fish market permits.

(c) Permits.

(1) Permits to take herring for roe purposes will be issued by the department beginning November 15. Permits will be sent by first class mail to the permittees. Not more than three permits shall be issued for Crescent City and not more than four permits shall be issued for Humboldt Bay.

No new round haul permits shall be issued for San Francisco Bay. No new gill net permits shall be issued for the Tomales Bay permit area until the maximum number of permits is less than 35. No new odd- or even-numbered gill net permits shall be issued for San Francisco Bay until the maximum number of permits is less than 160. No new "DH" permits shall be issued until the maximum number of permits is less than 80. The permittee shall be responsible for all crew members acting under his or her direction or control to assure compliance with all Fish and Game regulations as provided in this section, or in the Fish and Game Code, relating to herring.

(A) The total number of gill net permits issued to individuals not qualifying under subsection (a)(2) shall be the difference in number of permittees meeting such qualifications and the total number of gill net permits authorized by the commission in subsection (c)(1).

(B) Individuals not qualifying under subsection (a)(2) will be eligible to apply for any available odd- or even-numbered gill net permits provided they are a currently licensed California commercial fisherman.

(C) Individuals not qualifying and receiving permits under subsections (a)(2) or (c)(1)(B) will be eligible to apply for any available "DH" gill net permits provided they are a currently licensed California commercial fisherman.

(D) In the event that the number of eligible applicants qualifying under subsections (c)(1)(B) or (c)(1)(C) exceeds the available permits, a lottery shall be held.

(E) Preferential status will not be given for participation on vessels with permits specified in subsections (c)(2) and (c)(3) of this section.

(2) Fresh Fish Market. Ten permits will be issued to take herring for the fresh fish market in San Francisco Bay and five in Tomales Bay. See subsection 699(b) of these regulations for the fee for this permit. However, no permittee may take or possess herring except in the amount specified on a current daily market order, not to exceed 500 pounds, from a licensed fish dealer. Fresh fish market permits will be issued beginning November 1 at the department's License and Revenue Branch, Sacramento. In the event there are more applicants than the specified number of available fresh fish permits, a lottery will be held to determine the permittees. Applicants may apply for only one bay. Fresh fish market permits shall be in force from November 2 through November 15 and April 1 through October 31.

(3) Ocean Waters. Permits to take herring in ocean waters for the 2009 season will be issued by the department at its offices in Monterey, ~~the San Francisco Bay area and Eureka~~. See subsection 699(b) of these regulations for the fee for this permit. No Permits shall be issued for the 2010 season. Herring taken under the authority of subsections (c)(2) and (c)(3) may not be sold for roe purposes.

(d) Vessel Identification. The master of any boat engaged in taking herring under these regulations shall at all times while operating such boat, identify it by

displaying on an exposed part of the superstructure, amidship, on each side of the house and visible from the air, the herring permit number of that vessel in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently fixed to each side of the vessel.

(e) Monitoring of Herring.

(1) Herring taken for roe purposes may only be delivered to a person licensed pursuant to subsection (j) of these regulations.

(2) Gill net permittees shall notify the department's San Francisco Bay Area Marine Region office within 24 hours if they terminate fishing operations for the season prior to the overall quota being taken.

(3) The department will estimate from the current trend of individual boat catches the time at which the herring season catch will reach any quota permitted under these regulations and will publicly announce that time on VHF/Channel 16. It shall be the responsibility of all permittees to monitor this radio channel at all times. Any announcement made by the department on VHF/Channel 16 shall constitute official notice. All fishing gear must be removed from the water by the announced time terminating fishing operations. The department may announce a temporary closure for the gill net fishery in order to get an accurate tally of landings and to allow all boats to unload. If the fishery is reopened, permittees may be placed on allotted tonnages to preclude exceeding a quota and, if necessary, additional time may be granted to reach the quotas.

(4) It is unlawful to transfer herring or herring nets from one permittee to another or from one boat to another, or from one gear type to another except that, nonmotorized lighters may be used, provided they do not carry aboard any gear capable of taking herring, including net reels, and that the catches of not more than one permittee are aboard the lighters at any time. Permit vessels shall not serve as lighters for other permit boats. In San Francisco Bay a permittee and his/her gear must stay together when delivering fish to market. Except as specified in subsection (e)(6) of these regulations, all fish taken by gill nets shall be retained and landed. ~~Gill net permit vessels may not be used to assist in herring fishing operations during their off-week.~~

(5) All herring landed in excess of any established permit quota shall be forfeited to the department by the signing of a Release of Property form (FG-MR-674 (Rev. 5/02)), which is incorporated by reference herein. Such fish shall be sold or disposed of in a manner determined by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

(6) Sturgeon, halibut, salmon, steelhead and striped bass may not be taken by or possessed on any vessel operating under the authority of these regulations. All sturgeon, halibut, salmon, steelhead and striped bass shall be returned immediately to the water.

(f) Methods of Take.

(1) For purposes of this section regarding harvest of herring: San Francisco Bay is defined as the waters of Fish and Game districts 12 and 13 and that portion of district 11 lying south of a direct line extending westerly from Peninsula Point, the most southerly extremity of Belvedere Island (37 degrees 51 minutes 43 seconds N, 122 degrees 27 minutes 28 seconds W), to the easternmost point of the

Sausalito ferry dock (37 degrees 51 minutes 30 seconds N, 122 degrees 28 minutes 40 seconds W); Tomales Bay is defined as the waters of district 10 lying south of a line drawn west, 252 degrees magnetic, from the western tip of Tom's Point (38 degrees 12 minutes 53 seconds N, 122 degrees 57 minutes 11 seconds W) to the opposite shore (38 degrees 12 minutes 44 seconds N, 122 degrees 57 minutes 42 seconds W); ocean waters are limited to the waters of districts 6 (excluding the Crescent City area), 7, 10 (excluding Tomales Bay), 16 and 17 (except as specified in subsection (h)(6) of these regulations); Humboldt Bay is defined as the waters of districts 8 and 9; Crescent City area is defined as Crescent City Harbor and that area of the waters of district 6 less than 20 fathoms in depth between two nautical measure lines drawn due east and west true from Point Saint George (41 degrees, 47 minutes, 07 seconds N, 124 degrees, 15 minutes, 16 seconds W) and Sister Rocks (41 degrees, 39 minutes, 31 seconds N, 124 degrees 08 minutes 43 seconds W).

(2) The use of round haul nets to take herring for roe purposes is prohibited. The use of round haul nets to take herring is prohibited except in ocean waters (as defined in subsection (f)(1) of these regulations).

(A) No permittee in possession of any two San Francisco Bay herring permits (DH, Odd, or Even) shall possess or fish more than a total of 65 fathoms (1 shackle) of gill net, as measured at the cork line in San Francisco Bay. No permittee in possession of any four permits (DH, Odd, or Even) in San Francisco Bay shall possess or fish more than two nets with a maximum of 65 fathoms for each net (1 shackle) of gill net as measured at the cork line. No permittee shall possess or fish more than a total of 65 fathoms (1 shackle) of gill net, as measured at the cork line, in ~~San Francisco and Tomales bays~~ Bay. Said gill Gill nets used in San Francisco and Tomales bays shall not exceed 120 meshes in depth. In Humboldt Bay and Crescent City Harbor, no permittee shall possess or fish in combination more than 150 fathoms of gill net. Fresh fish permittees shall not possess or fish more than 65 fathoms (1 shackle).

Set gill nets shall be anchored by not less than 35 pounds of weight at each end, including chain; however, at least one-half of the weight must be anchor. Gill nets shall be tended at all times in San Francisco Bay. Tended means the registered gill net permittee shall be in the immediate proximity, not exceeding three nautical miles, of any single gill net being fished.

(B) In Tomales Bay, the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 inches or greater than 2 1/2 inches, except that four permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets approved by the department with mesh less than the size designated herein. In Humboldt Bay and Crescent City Harbor the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 1/4 inches or greater than 2 1/2 inches. In San Francisco Bay the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 or greater than 2 1/2 inches, except that six permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets of another size approved by the department. The meshes of any gill net used or possessed

by fresh fish permittees shall not be greater than 2 inches. Length of the mesh shall be the average length of any series of 10 consecutive meshes measured from the inside of the first knot and including the last knot when wet after use; the 10 meshes, when being measured, shall be an integral part of the net as hung and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while 10 meshes are suspended vertically under one-pound weight, from a single stainless steel peg or nail of no more than 5/32 inch in diameter. In Humboldt Bay and Crescent City Harbor, the length of any series of 10 consecutive meshes as determined by the above specification shall not be less than 22 1/2 inches or greater than 25 inches. In Tomales Bay, the length of any series of 10 consecutive meshes as determined by the above specifications shall not be less than 20 inches or greater than 25 inches. In San Francisco Bay, the length of any series of 10 consecutive meshes as determined by the above specification shall not be less than 20 inches or greater than 25 inches.

(C) No net shall be set or operated to a point of land above lower low water or within 300 feet of the following piers and recreation areas: Berkeley Pier, Paradise Pier, San Francisco Municipal Pier between the foot of Hyde Street and Van Ness Avenue, Pier 7 (San Francisco), Candlestick Point State Recreation Area, the jetties in Horseshoe Bay, and the fishing pier at Fort Baker. No net shall be set or operated within 70 feet of the Mission Rock Pier. In the Crescent City area and Humboldt Bay gill nets may be set or operated within 300 feet of any pier.

(D) No nets shall be set or operated in Belvedere Cove north of a line drawn from the tip of Peninsula Point (37 degrees 51 minutes 43 seconds N, 122 degrees 27 minutes 28 seconds W) to the tip of Elephant Rock (southwest of Pt. Tiburon at 37 degrees 52 minutes 19 seconds N, 122 degrees 27 minutes 03 seconds W). Also, no gill nets shall be set or operated from November 15 through February 15 inside the perimeter of the area bounded as follows: beginning at the middle anchorage of the western section of the Oakland Bay Bridge (Tower C at 37 degrees, 47 minutes, 54 seconds N, 122 degrees, 22 minutes, 40 seconds W) and then in a direct line southeasterly to the Lash Terminal buoy #5 (G"5"buoy, flashing green 4s at 37 degrees, 44 minutes, 23 seconds N, 122 degrees, 21 minutes, 36 seconds W), and then in a direct line southeasterly to the easternmost point at Hunter's Point (Point Avisadero at 37 degrees, 43 minutes, 44 seconds N, 122 degrees, 21 minutes, 26 seconds W) and then in a direct line northeasterly to the Anchorage #9 buoy "A" (Y "A" buoy, flashing yellow 4s at 37 degrees, 44 minutes, 46 seconds N, 122 degrees, 19 minutes, 25 seconds W) and then in a direct line northwesterly to the Alameda N.A.S. entrance buoy #1 (G"1"buoy, flashing green 4s at the entrance to Alameda Carrier Channel, 37 degrees, 46 minutes, 38 seconds N, 122 degrees, 20 minutes, 27 seconds W) and then in a direct line northwesterly to the Oakland Harbor Bar Channel buoy #1 (G"1' buoy, flashing green 2.5s at 37 degrees, 48 minutes, 15 seconds N, 122 degrees, 21 minutes, 23 seconds W) and then in a direct line southwesterly to the point of beginning. (Tower C of the Oakland Bay Bridge, at 37 degrees, 47 minutes, 54 seconds N, 122 degrees, 22 minutes, 40 seconds W).

(E) No boats or nets shall be operated or set in violation of existing state regulations applying to the navigation or operation of fishing vessels in any area, including but not limited to San Francisco Bay, Tomales Bay, Humboldt Bay and Crescent City Harbor.

(F) Gill nets shall be marked at both ends with a buoy displaying above its waterline, in Roman alphabet letters and Arabic numerals at least 2 inches high, the official number of the vessel from which such net is being fished. Buoys shall be lighted at both ends using matching white or amber lights that may be seen for at least a distance of 100 yards and marked at both ends with matching flags or markers or placards, all of rigid or non-collapsible material of the same color, on a staff at least 3 feet above the water at each end, bearing the herring permit number in contrasting 4-inch black letters.

(G) The use of explosives, seal bombs, or marine mammal deterrent devices in the herring fishery is prohibited inside the waters of San Francisco Bay during the herring season.

(H) All San Francisco Bay herring permittees or their temporary substitutes shall recognize city ordinances governing transient noise sources, when fishing within 500 feet of any shoreline with residential dwellings, between the hours of 10:00 p.m. and 7:00 a.m. through implementation of noise reduction measures specified or developed by the herring fishing industry and approved by the department. Noise reduction measures include, but are not limited to: noise dampening devices for shakers and anchor chains, muffled engine exhaust systems, limited use of deck speakers, and/or reduced speed within 500 feet of shore.

(g) Quotas.

(1) Crescent City Area: The total take of herring in the Crescent City area for commercial purposes by use of gill net only shall not exceed 30 tons per season.

(2) Humboldt Bay: The total take of herring in Humboldt Bay for commercial purposes by use of gill net only shall not exceed 60 tons per season.

(3) Tomales Bay: The total take of herring for commercial purposes by use of gill net only shall be 350 tons per season.

(A) The total take of herring for the fresh fish market shall not exceed 10 tons per season.

(4) San Francisco Bay: The total take of herring in San Francisco Bay for commercial purposes shall not exceed ~~4,118~~ 0 tons (gill net permittees plus fresh fish allocation) for the ~~2008-09~~ 2009-2010 season. Tonnage shall be allocated on the following basis:

(A) Gill net permittees (including "CH" permittees): ~~1,098~~ 0 tons (~~4,118~~ 0 tons minus fresh fish allocation). ~~Tonnage shall be allocated to each fishing group ("DH", odd, and even) in proportion to the number of permits that are assigned to each fishing group minus the number of permits in each platoon that are suspended for the entire season.~~ Each gill net permittee (designated by the department in writing) participating in research sponsored by the department shall be assigned an individual quota equal to 0.5 percent of the season gill net quota per assigned platoon, unless provided for pursuant to subsection (g)(4)(B) of these regulations.

(B) The total take of herring for the fresh fish market shall not exceed ~~20~~ 0 tons per season, except that 10 tons total may be transferred, in proportion determined by the department, to gillnet permittee(s) participating in research sponsored by the department pursuant to subsection (g)(4)(A) of these regulations.

(5) Ocean Waters: Herring may not be taken for roe purposes.

(h) Season.

(1) Humboldt Bay: The season shall be from noon on January 2 until noon on March 9.

(2) Crescent City: The season shall be from noon on January 14 until noon on March 23.

(3) San Francisco Bay: The season for permittees possessing any two or four San Francisco Bay herring permits (DH, Odd, or Even) shall be from 5 p.m. on Sunday, January 3, 2010, until noon on Friday, February 26, 2010. ~~5 p.m. on Monday, December 1, 2008 until noon on Friday, December 19, 2008 and from 5 p.m. on Sunday January 4, 2009 until noon on Friday, March 20, 2009.~~

~~(A) In San Francisco Bay, gill net permittees with even permit numbers and "CH" permittees assigned to the "even" fishing group shall be permitted to fish only on the following dates: January 4-9, January 18-23, February 1-6, February 15-20, March 1-6, and March 15-20.~~

~~(B) In San Francisco Bay, gill net permittees with odd permit numbers and "CH" permittees assigned to the "odd" fishing group shall be permitted to fish only on the following dates: January 11-16, January 25-30, February 8-13, February 22-27, and March 8-13.~~

~~(C) In San Francisco Bay, gill net permittees with "DH" permit numbers and "CH" permittees assigned to the "DH" fishing group shall be permitted to fish only on the following dates: December 1-5, December 7-12 and December 14-19. In the event permittees described under subsections (h)(3)(A) and (h)(3)(B) both reach their quotas pursuant to subsection (g)(4)(A), "DH" permittees, on notification by the department, may resume fishing operations until such group has reached the successive established termination date or quota.~~

~~(D) No more than six gill net permittees (designated in writing by the department) participating in research sponsored by the department shall be permitted to fish, under the direction of the department, from 5 p.m. on Monday, December 1, 2008 until noon on Friday, December 19, 2008 and from 5 p.m. on Sunday, January 4, 2009 until noon on Friday, March 20, 2009.~~

(4) In Tomales Bay, the season shall be from noon on Friday, ~~December 26, 2008 until noon Friday, February 27, 2009~~ Sunday, December 27, 2009, until noon on Friday, February 26, 2010.

(5) Herring fishing in San Francisco Bay is not permitted from noon Friday through 5:00 p.m. Sunday night. Herring fishing is allowed in Tomales Bay from noon Friday through 5:00 p.m. Sunday night if the department is reimbursed for the cost of operations. The department shall submit a detailed invoice of its cost of operations within 30 days of providing the service. Party shall remit payment to the department within 30 days of the postmark date of the department's invoice.

(6) Ocean Waters: The season shall be from April 1 to ~~July 13, 2009~~ October 31 for all authorized fishing gear except in districts 16 and 17 where the season shall be from April 1 to November 30. ~~An incidental allowance of no more than 10 percent herring by weight of any load composed primarily of other coastal pelagic fish species or market squid may be landed at any time during 2009.~~ Beginning January 1, 2010, all fishing for herring in ocean waters will be prohibited (except as specified in subsection (f)(1) of these regulations). An incidental allowance of no more than 10 percent herring by weight of any load composed primarily of other coastal pelagic fish species or market squid may be landed.

~~(7) In the event permittees described under subsections (h)(3)(A) or (h)(3)(B) reach their quota pursuant to subsection (g)(4)(A), the alternate group of permittees on notification by the department may commence fishing operations until such group has reached the successive established termination date or quota.~~

~~(7) In the event permittees described under subsections (h)(3)(A) or (h)(3)(B) reach their quota pursuant to subsection (g)(4)(A), the alternate group of permittees on notification by the department may commence fishing operations until such group has reached the successive established termination date or quota.~~

(i) Any permit issued pursuant to this section may be suspended or revoked at any time by the commission for cause after notice and opportunity to be heard, or without a hearing upon conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery by a court of competent jurisdiction. A permittee whose permit has been suspended or revoked for conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery may request a hearing before the commission to show cause why his/her herring fishing privileges should be restored. A person whose herring permit has been revoked by the commission shall not participate in any herring fishery during the following season. A person whose herring permit has been suspended for the entire season by the commission shall not participate in any herring fishery during the season the permit is suspended. A person whose herring permit has been suspended for a period less than the entire season by the commission shall not participate in any herring fishery during the period that the permit is suspended. If a herring permit that had a temporary substitute is suspended by the commission due to the actions of the temporary substitute, the person who acted as the temporary substitute shall not participate in any herring fishery during the following season during the period that the permit is suspended. If a herring permit that had a temporary substitute is revoked by the commission due to the actions of the temporary substitute, the person who acted as the temporary substitute shall not participate in any herring fishery during the following season. If a herring permittee is convicted of a violation, or if the permit is suspended or revoked, due to the actions of a temporary substitute who is simultaneously fishing his or her own permit on a single vessel in the same fishing group, the person who was acting as the temporary substitute will receive the same penalty against his/her own permit as received by the permittee, pursuant to these

regulations and Section 163.5, Title 14, CCR. For Category II violations prescribed in Section 163.5(f) against a permit due to the actions of a temporary substitute while simultaneously fishing his/her own permit, equal points or penalties shall be assigned to the permit owned by the temporary substitute.

(j) Herring Buyer's Permit. A holder of a current fish receiver's license shall obtain a permit to buy herring for roe purposes for each fishing area specified in subsection (f)(1) of these regulations and approved by the department. After approval of an application and payment of the \$750 filing fee (filing fees in Humboldt Bay and Crescent City area shall be waived), a revocable, nontransferable permit to buy herring for roe purposes may be issued subject to the following regulations:

(1) The permittee shall permanently mark all vehicles, containers or pallets with individualized serial numbers and predetermined tare weights. The serial number and predetermined tare weight shall be permanently marked in letters, and numerals at least 3 inches high on each side of vehicle container or pallet.

(2) A landing receipt must be made out immediately upon completion of weighing of any single boat load (hereinafter "load") of herring of a permittee. A sample of herring for roe testing purposes shall be taken from every load. No herring shall be taken for testing purposes from a load that has not first been weighed and recorded.

(A) The landing receipt for each vessel must be completed and signed by both the herring permittee and a certified weighmaster or his/her deputy prior to commencing unloading operations of another vessel.

(B) The weighmaster or deputy filling out the landing receipt must include all information required by Fish and Game Code Section 8043 and shall sign the landing receipt with his/her complete signature. The weighmaster shall list on the landing receipt the number of fish in, and the weight of, each roe test for the landing reported on the receipt.

(C) All landing receipts that have not been delivered to the department must be immediately available to the department at the weigh station.

(D) A reasonable amount of herring will be made available by the herring buyer to the department, at no cost, for management purposes.

(3) Prior to weighing herring, each permittee shall have each weighing device currently certified and sealed by the County Division of Weights and Measures.

(4) Weight tally sheets shall be used when any load of fish is divided and placed into more than one container prior to the completion of the landing receipt. Weight tally sheets shall include the time unloading operations begin.

(A) The tally sheets shall be composed of four columns:

1. The serial or I.D. number of all containers in which the load is initially placed and all subsequent containers, if any, in which the load is placed until, and including for, shipment from the buyer's premises.
2. The gross weight;
3. The tare weight of the bin or containers; and
4. The net weight of fish. Net weight will include the weight of the herring taken for testing purposes.

- (B) The work or weight tally sheets shall be retained by the permittee for one year, and must be available at all times for inspection by the department.
- (C) When requested by the department, the buyer shall submit to the department a California Highway Patrol weighing certificate for any truck load designated by the department. Such certificate shall be placed in the U.S. Postal system to the department's San Francisco Bay Area Marine Region office within twenty-four (24) hours of the truck's departure from the buyer's premises.
- (5) In San Francisco Bay, herring may not be unloaded between the hours of 10 p.m. and 6 a.m., or at any time on Saturdays and Sundays, unless the permittee has notified and received prior approval from the department to conduct such activities during those hours.
- (6) Every permittee shall comply with all applicable sections of the Fish and Game Code.
- (7) The permittee is responsible to ensure that all provisions of the herring buyer's permit are complied with, even though the tasks may be delegated to others.
- (8) The permit may be revoked upon violation of any provisions contained herein by the holder of the permit, his/her agents, servants, employees, or those acting under his/her direction or control and shall not be renewed for a period of one year from the date of revocation.

Note: Authority cited: Sections 1050, 5510, 8550, 8552.1, 8553 and 8555, Fish and Game Code. Reference: Sections 713, 1050, 7852.2, 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559, Fish and Game Code.

Section 164, Title 14, CCR is amended to read:

**§164. Harvesting of Herring Eggs.**

- (a) Herring eggs may be taken for commercial purposes only under a revocable, nontransferable permit issued by the department. A department-issued copy of the permit shall be aboard each vessel harvesting, processing or transporting herring eggs under the authority of the permit. The permittee or his/her authorized agent shall be aboard any vessel that is harvesting, processing or transporting herring eggs under the authority of the permit. The permit shall list the names of all authorized agents and all vessels used for harvesting, processing or transporting herring eggs under the authority of the permit (This includes the attachment of any changes approved by the department after the permit is issued).
- (b) Herring eggs may be harvested only from the waters of San Francisco Bay. The harvest season is December 1 to March 31.
- (c) For purposes of this section, San Francisco Bay is defined as the waters of Fish and Game districts 11, 12, 13 and that part of district 2 known as Richardson Bay.
- (d) No more than 11 permits may be issued under the provisions of these regulations. No new permits shall be issued until the maximum number of permits is less than 10. The commission will review and determine annually whether further action, other than permit attrition, is deemed necessary to achieve a reduction to 10 permits.

(e) Fishing, Harvesting, and Processing Defined. Unless the context requires otherwise, the following definitions shall apply to the herring eggs on kelp (HEOK) fishery:

(1) "Fishing" means the act of suspending giant kelp (*Macrocystis pyrifera*) for the purposes of taking herring eggs, and/or the subsequent act of removing herring eggs on kelp from the water for the purposes of transport or harvest. Any person engaged in fishing shall possess a commercial fishing license pursuant to Section 7850 of the Fish and Game Code.

(2) "Harvesting" means the act of removing herring eggs on kelp from the water for the purposes of processing for sale and/or transport to market. Any person engaged in harvesting shall possess a commercial fishing license pursuant to Section 7850 of the Fish and Game Code.

(3) "Processing" means the act of separating or removing kelp blades (with herring eggs attached) from the stipe of harvested herring eggs on kelp, and loading the processed blades into bins or totes. Any person engaged in, or employed for the specific purpose of, processing herring eggs on kelp shall fall under the category of nonapplicability in regard to possession of a commercial fishing license pursuant to Section 7850.5 of the Fish and Game Code. Pursuant to Section 7850.5 of the Fish and Game Code, a person engaged in processing (permittees and authorized agents excepted) may stand aboard a herring eggs on kelp vessel while at a dock or landing, but any may not be transported aboard the vessel. A person engaged in processing (permittees and authorized agents excepted) may not stand on the herring eggs on kelp raft, nor physically participate in the removal of herring eggs on kelp from the water.

(f) Permits. Permits shall be issued in two categories:

(1) Prior permittee. Permits shall be issued to all prior permittees. A prior permittee is defined as a person who has:

- (A) met the requirements under subsection (g) of these regulations, and
- (B) renewed their herring eggs on kelp permit for the immediately preceding herring eggs on kelp season, and
- (C) submitted all fees from prior seasons.

(2) New permittee. A new permittee is defined as any applicant who held a herring permit issued pursuant to Section 163 of these regulations during the preceding herring season, but does not qualify as a prior permittee as defined above. The total number of permits available to new permittees shall be the difference between the 10 permit limit and the number of permits issued to individuals qualifying as prior permittees. In the event that the number of eligible applicants qualifying for new permits exceeds the number of available permits, a lottery shall be held.

(g) Permit conditions: Every person operating under a permit to harvest herring eggs shall:

(1) Forfeit his or her herring fishing privileges authorized pursuant to Section 163 of these regulations during the same season.

(2) In addition to any license fees required by the Fish and Game Code, pay a royalty of \$500 per ton of herring eggs on kelp taken. (The royalty fee shall include the landing tax imposed pursuant to Article 7.5, (commencing with

Section 8040) Chapter 1, Part 3, Division 6, of the Fish and Game Code, and the royalty fee required for the harvesting of kelp pursuant to Section 165, Title 14 CCR).

(3) Submit a Herring-Eggs-on-Kelp Monthly Landings and Royalty Report (FG 143 HR (Rev. 5/01), which is incorporated by reference herein (available at the department's San Francisco Bay Area Marine Region office), with payment due to the department's San Francisco Bay Area Marine Region office for each month of the season, within 60 days after the close of the month for which it is due.

(h) Permit applications. Each applicant for a herring eggs on kelp permit shall:

(1) Completely fill out and submit the required department Herring-Eggs-on-Kelp Permit Application (FG 1406 ~~5/08~~ 1/09) which is incorporated by reference herein (available at the department's License and Revenue Branch, Sacramento), for the season to which the application applies. No person shall submit more than one application per season. Applications shall include a performance deposit as specified in subsection (i).

(2) Permit Renewal. Applications for renewal of all Herring-Eggs-on-Kelp permits shall be received by the department, or if mailed, postmarked, on or before August 1 each year. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2.

(3) Have submitted all fees from prior seasons.

(i) Each application shall include a performance deposit equal to 50% of the royalty price for the permit (i.e., allotment). The deposit shall be credited to the amount payable by the successful applicants and shall not be refundable. The performance deposit shall be returned to an applicant who does not qualify for a permit.

(j) Method of Take. Herring eggs may only be taken by harvesting giant kelp (*Macrocystis* sp.), with spawn (i.e., eggs) attached, which has been artificially suspended using the following two methods: rafts and/or lines, a technique commonly known as the "open pond" method. For the purpose of this Section, a raft is defined as a temporary, mobile structure with a metal, wood or plastic frame. The total surface area of each raft is not to exceed 2,500 square feet. Rafts used by a licensed herring eggs on kelp permittee, prior to the 1995-96 season, are exempt from these size specifications. Such rafts may not be modified to exceed 2,500 square feet total surface area. Any new raft built after the 1995-96 herring eggs on kelp season must meet the specified dimensions. A line is defined as a piece of line of no more than 1200 feet in overall length that is suspended under a suitable permanent structure (e.g., pier or dock), or between two permanent structures (e.g., piers or docks). Kelp lines shall have floats or cork over the entire length of line. Each end of the line must be attached to a permanent structure. Kelp lines suspended from a permanent structure (e.g., pier or dock) shall not be placed as to hinder navigation. If kelp lines are suspended under a permanent structure (e.g., pier or dock), or if a raft is tied up to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), the permittee shall obtain prior written approval from the appropriate owners or controlling agency (e.g., wharfinger, Coast Guard, Navy or private owner). Buoys are not permanent structures.

(1) Not more than two rafts and/or two lines may be used per permit. Two permits may be simultaneously fished on the same raft if each line on the raft is clearly identified with the permit number of the owner. Each raft shall have a light at each corner that may be seen for at least a distance of 100 yards. Each raft shall be further identified with the herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently affixed to the raft. Lines shall be marked at the beginning and the end with a light that may be seen for at least a distance of 100 yards. Each line shall be further identified with the herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background, permanently affixed to the line.

(2) Not more than ten sets of test kelp may be used per permit. Test kelp is defined as one stipe with blades, attached to a length of line for the purpose of testing for spawning activity. A set is defined as one length of line with test kelp attached. Each set must be attached to a permanent structure (e.g., pier, dock) and marked with the herring eggs on kelp permit number, in Roman alphabet letters and Arabic numerals at least 3 inches high, at a point above the waterline. No herring eggs on kelp shall be retained from test kelp sets for testing purposes that have not been weighed and recorded, pursuant to subsection 164(k).

(3) Rafts and/or lines may not be placed in any waters or areas otherwise closed or restricted to the use of herring gill nets operating pursuant to Section 163 of these regulations, except where written approval is granted by the owners or controlling agency (e.g., Navy, Coast Guard). Rafts and/or lines may be placed in Belvedere Cove or Richardson Bay, only if permittees tie their rafts and/or lines to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), and obtain prior written approval. Buoys are not permanent structures.

(4) The total amount of herring eggs on kelp that may be harvested by each permittee shall be based on the previous season's spawning population assessment of herring in San Francisco Bay, as determined by the department. This assessment is used to establish the overall herring fishing quotas pursuant to Section 163 of these regulations.

The total amount of herring eggs on kelp that may be harvested by an individual possessing a gill net permit issued pursuant to Section 163 of these regulations shall be ~~4.4~~ 0 tons per season. The total amount of herring eggs on kelp that may be harvested by an individual possessing a "CH" permit issued pursuant to Section 163 of these regulations shall be ~~4.9~~ 0 tons per season.

(5) Each vessel operating under or assisting in fishing operations under a permit issued pursuant to these regulations shall have a current Fish and Game commercial boat registration and be further identified with the permittee's herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently affixed to each side of the vessel. If a herring eggs on kelp vessel is also used as an assist vessel in another permittee's fishing operation, it must be identified with the number of the permit it is assisting.

(6) The permittee shall notify the department's License and Revenue Branch, Sacramento in writing with the name and registration number of any vessel that will be used for harvesting, processing or transporting herring eggs under the authority of the permit. The permittee shall provide a copy of the current California certificate of boat registration with the permittee's written notification. The permittee shall receive written approval from the department before using a vessel for harvesting, processing or transporting herring eggs.

(7) Permittee shall notify the department's San Francisco Bay Area Marine Region office at the telephone number designated on the herring eggs on kelp permit within a 4-hour period prior to the suspension of kelp on a raft and/or lines and supply the following information:

(A) Where the kelp suspension will take place; and

(B) Where the permittee plans to fish the rafts and/or lines; and

(C) A local fax number or mailing address where confirmation of kelp suspension notification can be sent.

(k) Harvesting, Landing and Processing Requirements. Every person who harvests, receives, processes or wholesales herring eggs shall comply with the following requirements.

(1) Obtain all appropriate commercial fish business licenses and permits required by Fish and Game Code sections 8030-8038.

(2) Permittee shall notify the department's San Francisco Bay Area Marine Region office at the telephone number designated on the herring eggs on kelp permit a minimum of 12 hours prior to harvesting herring eggs on kelp on a weekday and supply the following information: description and point of departure of the vessel used; the exact location of each raft and/or line and estimated time of beginning of each operation; and if harvesting occurs, the point of landing and time of landing or off-loading of the herring eggs on kelp harvested. If any of this information changes after notification is given, the permittee shall again notify the department at the telephone number designated on the herring eggs on kelp permit.

(3) Herring eggs on kelp may be harvested any time on weekdays, but shall not be off-loaded between the hours of 10:00 p.m. and 6:00 a.m.

(4) Herring eggs on kelp may be harvested on Saturdays and Sundays at any time if the permittee reimburses the department for the cost of operations. The department shall submit a detailed invoice of its cost of operations within 30 days of providing the services. Permittee shall remit payment to the department within 30 days of the postmark date of the department's invoice. Permittee shall notify the department at the phone number designated on the herring eggs on kelp permit, during normal business hours (between 8:00 a.m. and 5:00 p.m., Monday through Friday) prior to harvesting herring eggs on kelp on Saturday or Sunday, and shall supply the following information:

(A) Description and point of departure of the vessel used.

(B) The exact location of each raft and estimated time of the beginning of the harvesting operation, the estimated time of off-loading of the harvested product, and the point of off-loading.

(C) A local telephone number of the permittee for the immediate confirmation or clarification of the information required in subsection 164(k)(4).

(5) Permittee shall have a certified scale aboard the vessel at all times if any brining is conducted aboard that vessel. This scale shall be used to determine the total weight of herring eggs on kelp prior to brining. For the purposes of this section, all portions of the kelp blade, including all trimmed-off portions (trim), shall be considered part of the harvested product and included in the total weight of herring eggs on kelp. The stipe and pneumatocyst shall not be considered a part of the harvested product; therefore, the weight of the stipe and pneumatocyst shall not be considered in determining the total weight of herring eggs on kelp.

(6) All bins or totes shall be permanently marked with individualized serial numbers, beginning with the prefix CA, and predetermined tare weights (including lids). The serial number and predetermined tare weight shall be permanently marked in letters and numerals at least 3 inches high on each side of the bin or tote.

(7) Prior to weighing herring eggs on kelp, each receiver of herring eggs on kelp shall have a scale currently certified and sealed by the County Division of Weights and Measures.

(8) Weight tally sheets and a landing receipt shall be immediately completed upon the landing and weighing of any single permittee's boat load of harvested herring eggs on kelp (hereinafter "load").

(A) The landing receipt for each herring eggs on kelp permittee shall be completed and signed by the permittee prior to commencing unloading operations of another permittee's load.

(B) The landing receipt for each load shall include all information required by Fish and Game Code Section 8043. Tally sheets shall indicate the serial number, the tare weight of the bin or tote, the net weight of the product (eggs on kelp), excluding the salt and brine and the gross weight of each bin or tote. Filled bins or totes shall be weighed when landed on-shore, or before they are moved from the premises if processing takes place on-shore. The weight tally sheet shall be retained by the permittee for one year and shall be available at all times for inspection by the department. All herring eggs on kelp landed in excess of any established permit quota shall be forfeited to the department by the signing of a Release of Property form (FG-MR-674 (Rev. 5/02)), which is incorporated by reference herein). Such excess of herring eggs on kelp shall be sold or disposed of, and the proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

(9) There shall be no landing or off-loading of herring eggs on kelp from a permittee's vessel, from 10:00 p.m. Friday to 6:00 a.m. Monday, unless brining is conducted at a shore-based facility. If brining occurs on-shore, the permittee shall notify the departments designated contact 12 hours prior to the shipping or removal of the bins or totes from the premises.

(l) These regulations and all sections of the Fish and Game Code pertaining thereto shall be set forth in all permits. Permits shall be issued upon the

conditions contained in the application and signed by the applicant that he has read, understands, and agrees to be bound by all terms of the permit.

(m) A permit may be suspended by the Department of Fish and Game for breach or violation of the terms of the permit by the permittee, or any other person(s) operating under the terms of the permit. Any such suspension may be appealed to the Fish and Game Commission pursuant to section 746 of these regulations.

(n) Authorized agents. Each herring eggs on kelp permittee may designate two authorized agents to operate under his or her permit. To designate an authorized agent, the permittee shall submit to the department's License and Revenue Branch, Sacramento a completed, signed Authorized Agent Form (MRD 164 (8/97)) which is incorporated by reference herein. A permittee may replace an authorized agent by submitting a new Authorized Agent Form to the department's License and Revenue Branch, Sacramento. A copy of the current California commercial fishing license for each authorized agent shall be submitted with each Authorized Agent Form. A person designated on the Authorized Agent Form shall act as an authorized agent only after the permittee has received written approval from the department. An authorized agent:

- (1) May serve in the place of the permittee for all fishery activities requiring the presence or action of the permittee, including the signing of landing receipts;
- (2) Shall possess a current California commercial fishing license;
- (3) Shall not be another herring eggs on kelp permittee unless the other permittee has stopped fishing his or her permit for the season;
- (4) Who does not hold a herring eggs on kelp permit, may act as an authorized agent for more than one herring eggs on kelp permittee.

Note: Authority cited: Sections 1050, 5510, 8389, 8552.1, 8553 and 8555, Fish and Game Code. Reference: Sections 713, 1050, 7850, 7850.5, 7852.2, 8043, 8053, 8389 and 8550-8556, Fish and Game Code.